

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Petition for Declaratory Ruling that)
pulver.com's Free World Dialup)
Is neither Telecommunications nor a)
Telecommunications Service)
_____)

WC Docket No. 03-45

REPLY COMMENTS OF CISCO SYSTEMS, INC.

Even in telecommunications regulation, some things are simple. This is one of them. pulver.com's Free World Dialup ("FWD") service is neither "telecommunications" nor a "telecommunications service," as defined by the Telecommunications Act of 1996 (the "Telecommunications Act"). There is no need for drawn out analysis nor is there a need to duck this conclusion until myriad more complicated issues are settled.

FWD is nothing more than a software application – similar to email or instant messaging – that facilitates point-to-point voice over Internet Protocol ("VoIP") communications using a subscriber's existing broadband connection and specialized customer premise equipment ("CPE"). The Commission should therefore reject those comments that imply FWD might be "telecommunications" or a "telecommunications service," and reject any effort to extend traditional, Title II regulation to Internet applications such as FWD by granting pulver.com's Petition.

DISCUSSION

Cisco Systems and several commenting parties agree with pulver.com's assertion that FWD does not meet the statutory definition of "telecommunications" or "telecommunications service."¹ As discussed in pulver.com's Petition, FWD is nothing more than a software application that enables subscribers to utilize Internet access provided through a broadband connection to send and receive voice communications over the Internet.² FWD does not require payment of a fee to "facilitate access to the public switched telephone network,"³ nor does FWD offer subscribers the underlying transmission capability needed to communicate with one another – subscribers must obtain a connection to the Internet from an Internet service provider ("ISP") or a broadband provider. As correctly summarized by WorldCom, "FWD comprises nothing more than the exchange of packets between two endpoints on the public Internet."⁴ Qwest concurs that FWD simply "facilitate[s] two endpoints communicating with each other on a peer-to-peer basis," similar to two other common Internet-based applications – Instant messaging and DNS Translation service.⁵ The record in this docket proves that FWD is neither "telecommunications" nor a "telecommunications service," and, like comparable Internet applications, should therefore remain unregulated.

¹ See, e.g., International Softswitch Consortium Comments at 3; Global Crossing Comments at 2; WorldCom Comments at 1; VON Coalition Comments at 3.

² See *Petition for Declaratory Ruling That pulver.com's Free World Dialup Is neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45 (filed February 5, 2003) at 6 ("*pulver.com Petition*"). To the degree that the subscriber uses a cable modem connection to establish his or her broadband Internet service, Commission precedent holds that the subscriber is purchasing an "information service" in the first instance, and simply running an IP-based voice application over that information service. See *In the Matter of Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, 17 FCC Rcd. 4798, 4823 ¶ 39 (2002) *appeal pending sub. nom.* No. 02-60518 (9th Cir.).

³ International Softswitch Consortium Comments at 2.

⁴ WorldCom Comments at 2.

⁵ Qwest Comments at 4.

Intimations that FWD might fall into the definitions of “telecommunications” or “telecommunications service” are simply inconsistent with the statute and the Commission’s long-standing policy of protecting the Internet from burdensome, Title II regulation. By the same reasoning, arguments that a Commission grant of the Petition would forever tie the Commission’s hands with respect to VoIP regulation must also fail.

In arguing that FWD includes a telecommunications transmission component, SBC,⁶ Verizon,⁷ and the Department of Justice and Federal Bureau of Investigation⁸ mischaracterize what it means to provide “telecommunications.”

The Telecommunications Act defines “telecommunications” as follows:

The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.⁹

Under this rather clear statutory language, FWD does not constitute “telecommunications.” FWD is an Internet application that allows subscribers “to establish the means to exchange voice packets using the connectivity provided by their own ISPs.”¹⁰ The subscriber uses FWD in conjunction with the transmission capability provided through the subscriber’s broadband connection. This underlying transmission capability – which is provided by an entity other than pulver.com – constitutes “telecommunications.”

This analysis is entirely consistent with the Commission’s *1998 Report to Congress*,¹¹ wherein the Commission considered whether VoIP applications provide interstate

⁶ See SBC Communications Comments at 3.

⁷ See Verizon Comments at 3 n.9.

⁸ See Department of Justice & Federal Bureau of Investigation Comments at 5 n.12.

⁹ 47 U.S.C. § 153(43).

¹⁰ Qwest Comments at 4.

¹¹ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501 (1998) (“*1998 Report to Congress*”).

telecommunications and therefore must contribute to the federal universal service fund (“USF”) pursuant to Section 254(d) of the Telecommunications Act.¹² The Commission held that an ISP does not provide or offer “telecommunications” when a subscriber sends voice communications using IP-based applications across that ISP’s network.¹³ Instead, the ISP simply provides the subscriber with Internet access, which is an information service.¹⁴ The subscriber can use Internet access to send communications (both data and voice) using Internet applications, such as FWD. Importantly, the Commission recognized that it is the provider of the underlying transmission facilities that is providing the “telecommunications” used, not the Internet application provider.¹⁵ Indeed, if FWD is “telecommunications” simply because a subscriber uses it in conjunction with the subscriber’s broadband connection, then every web page publisher is providing “telecommunications” through its connection to the Internet. Such an expansive definition of “telecommunications” has no basis in the statutory definition of “telecommunications,” and would violate both the Commission’s deregulatory treatment of the Internet and Congressional intent.

Several parties urging denial of the Petition focus on minor similarities between FWD and actual telecommunications services.¹⁶ The Commission, however, rejected this sort of application-based approach to regulating IP-based Internet applications in its *1998 Report to Congress*, specifically declining to evaluate all applications running over Internet access

¹² 47 U.S.C. § 254(d).

¹³ *1998 Report to Congress* at 11543 ¶ 87.

¹⁴ *See id.*

¹⁵ Qwest argues that while FWD is not “telecommunications,” it includes a telecommunication component because it is an information service. *See* Qwest Comments at 9, 11. But FWD is an Internet application – similar to email – not an information service. The information service is provided to the FWD subscriber by the ISP and/or broadband provider that provides the subscriber with access to the Internet.

¹⁶ *See* Verizon Comments at 3; BellSouth Comments at 7; SBC Comments at 3.

separately from the underlying IP service itself.¹⁷ Thus, any suggestion that the Commission should define the FWD application as a “telecommunications service” is inconsistent with the Commission’s decision to regulate all IP-based Internet applications in the same manner, regardless of whether they transmit voice or data.

Finally, the Commission should reject assertions by some commenting parties who mischaracterize pulver.com’s Petition as an unfair attempt to win special favors.¹⁸ But they simply misunderstand. pulver.com is not seeking favorable regulatory treatment from the Commission, but rather the straightforward reaffirmation of the Commission’s analysis of “computer-to-computer” software applications as set forth in the Commission’s *1998 Report to Congress*, now almost five years old.¹⁹ In fact, it is the opponents of pulver.com’s Petition who seek to unsettle the regulatory status of VoIP-based Internet applications through collateral attacks on the Commission’s prior decisions.²⁰ The Commission should grant the Petition, and thereby decline to create uncertainty that would slow the growth of numerous voice applications, as well as the growth of IP networks generally.

¹⁷ See *1998 Report to Congress* at 11539 ¶ 79.

¹⁸ Department of Justice & Federal Bureau of Investigation Comments at 4-5.

¹⁹ *1998 Report to Congress* at 11543 ¶ 87.

²⁰ See, e.g., BellSouth Comments at 6-7 (“[T]he Commission will consider whether all Internet service providers should contribute to the Universal Service Fund regardless of the broadband platform that they use.”) This statement is incorrect. In the pending Wireline Broadband docket, the Commission only is considering whether ISPs “that supply last-mile connectivity over their own facilities” should make universal service contributions. See *In the Matter of the Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, CC Docket No. 02-33, *et al.* (rel. February 15, 2002) at ¶ 74. Regardless, pulver.com is an Internet application provider, not an ISP, so the Commission’s tentative conclusions in the Wireline Broadband proceeding are inapplicable to pulver.com.

CONCLUSION

The Commission is most efficient when it acts promptly on the simple issues. This case is easy and the Commission should say so. It should reject the attempt of some commenting parties to delay this proceeding or use it as part of a larger effort to undermine or cripple VoIP.

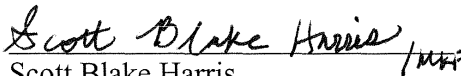
The definitions of “telecommunications” and “telecommunications service” simply do not include FWD and similar VoIP offerings. pulver.com’s Petition is consistent with the Commission’s long-standing precedent that nascent Internet service offerings should remain unburdened by traditional, Title II regulation. Cisco therefore supports pulver.com’s request for the Commission to declare that pulver.com’s FWD service is neither “telecommunications” nor a “telecommunications service.”

Respectfully submitted,

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